

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board
on Universal Service

CC Docket No. 96-45

PETITION FOR CLARIFICATION OF
SPRINT SPECTRUM L.P. D/B/A
SPRINT PCS

Sprint Spectrum L.P. , d/b/a Sprint PCS ("Sprint PCS")¹ hereby submits its Petition for Clarification of this Commission's Report and Order of May 8, 1997 (the "*Order*").² Sprint PCS requests that the Commission confirm that states must conduct their intrastate universal service programs in a competitively- and technologically- neutral fashion that gives CMRS providers a full opportunity to participate in those programs.

As the Commission's *Order* points out, in the Telecommunications Act of 1996 "Congress expressly allowed only for those state universal service mechanisms that are not

¹ Sprint Spectrum L.P. is a joint venture formed by subsidiaries of Sprint Corporation, Cox Communication, Inc., Tele-Communications, Inc. and Comcast Corporation to provide nationwide wireless services. Sprint Spectrum L.P., through its affiliates, holds broadband (A and B Block) PCS licenses in 30 Major Trading areas ("MTAs"). It also has interests in the licenses for the Philadelphia MTA, the Washington, D.C.-Baltimore MTA and the Los Angeles-San Diego MTA. Sprint Spectrum L.P.'s affiliate, American Personal Communications, currently provides PCS services in the Washington, DC-Baltimore MTA. In addition, Sprint Corporation's subsidiary SprintCom, Inc. is an applicant in the ongoing D, E, and F Block PCS auction, and currently holds the high bid for 160 licenses in 139 markets.

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 97-157, Report and Order, (rel. May 8, 1997) ("*Order*").

'inconsistent with the Commission's rules to preserve and advance universal service.'"³ The Commission's universal service rules, in turn, provide that federal universal service programs must be competitively neutral, and must ensure that "any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under section 214(e)(1)."⁴ Accordingly, state universal service programs will be consistent with this Commission's universal service regulations, and therefore lawful under the 1996 Act, only if they permit full participation by CMRS and other wireless telecommunications service providers.

Although the requirement that state universal service programs must permit full participation by CMRS providers is not open to serious dispute, the Commission should make this requirement unmistakably clear. In the absence of such a clarification, incumbent wireline local exchange carriers will follow their familiar practice of exploiting imagined ambiguities in the Act and the Commission's orders to hinder new entrants.⁵ Specifically,

³ *Order* at ¶¶ 43, 818; 47 U.S.C. §254 (f). The *Order* states, in particular, that a state may establish "criteria for the designation of eligible carriers in connection with the operation of that state's universal service mechanism," but only to the extent those criteria are consistent with the Commission's universal service rules. *Id.* at ¶ 136.

⁴ *Id.* at ¶ 145. Section 214 (e)(1) of the 1996 Act specifies the standards for state designation of carriers that will receive universal service supports. Neither the FCC nor the states may impose additional requirements not contained in §214(e)(1). *Order* at ¶ 136.

⁵ For an example of such conduct, the Commission need look no further than the recent refusals of several incumbent local exchange carriers ("ILECs") to pay reciprocal compensation for local calls placed to Internet service providers that are customers of competitive local exchange carriers. See letter from Richard J. Metzger, Association for Local Telecommunications Services, to Regina M. Keeney, Federal Communications Commission (June 20, 1997); see also FCC Public Notice, "Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," rel. July 2, 1997. Although the ILECs treat this traffic as local in their tariffs, cost accounting and separations reports, and although this traffic clearly fits the Commission's definition of "local traffic" for which reciprocal compensation is required, the CLECs have been forced to seek the Commission's clarification of its local competition regulations to confirm this obvious fact.

Sprint PCS fully expects wireline incumbents to urge state commissions to adopt universal service programs that discriminate in favor of wireline carriers and limit or prevent participation by CMRS providers. Such discriminatory programs might include definitions of universal service that favor incumbents; eligibility requirements, in addition to those found in §214 of the Act, that can be met only by wireline carriers; and means of calculating support payments that favor the technology and cost structures of incumbent local exchange carriers.

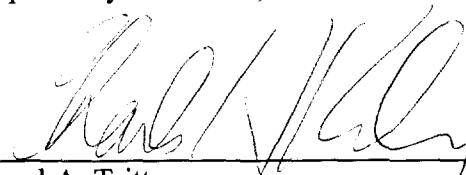
Even where these efforts do not succeed, the cost and delay of resisting them before dozens of state commissions will waste regulatory resources and impose needless costs on new entrants. Where they do succeed, efforts to limit participation in state programs by CMRS providers not only will produce discriminatory universal service programs at the state level, but will have unlawful and discriminatory effects on federal universal service programs as well. Notably, CMRS providers will not seek designation as eligible telecommunications carriers under the federal program if they will be required to offer the same service, in the areas for which eligibility is sought, as competing incumbents who receive intrastate subsidies for which CMRS providers are ineligible. As a consequence, in states that prevent or limit CMRS provider participation, the federal program of universal service, no less than the counterpart state programs, will fail to achieve the competitive and technological neutrality mandated by the 1996 Act and the *Order*.⁶ From the point of view

⁶ State programs that prevent or limit participation by CMRS providers also will be subject to preemption as “prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. §253(a). Petitions for preemption, however, are cumbersome and disruptive and can be obviated by the simple clarification requested here.

of the telecommunications user, choice will be limited and the benefits of competition, not only among providers but among technologies, will be lost.⁷

Accordingly, Sprint PCS urges the Commission to confirm that state universal service programs may establish eligibility conditions, methods of calculating the level of support to be paid to eligible entities and other rules only insofar as those rules do not discriminate against any class of telecommunications service provider or technology.

Respectfully submitted,



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⁷ These possible outcomes demonstrate the importance of guidance, from this Commission, as to the kinds of state universal service programs that will be -- and will not be -- consistent with the Commission's rules as required by §254(f). With such guidance, the states are less likely to adopt programs that render the universal service policies of the Act and the enabling rules of this Commission ineffective. The Commission's confirmation that consistency with federal rules requires competitively- and technologically- neutral state programs is an important step in this direction.

CERTIFICATE OF SERVICE

I, Kimberly E. Thomas, do hereby certify that the foregoing **PETITION FOR CLARIFICATION OF SPRINT SPECTRUM L.P. D/B/A SPRINT PCS** was mailed on this 17th day of July, 1997, via first class U.S. mail to the following:

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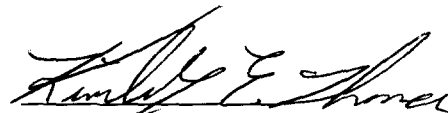
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